

# VORYS

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December 5, 2007

Jack A. Van Kley, Esq.  
Van Kley and Walker, LLC  
132 NW Boulevards Suite C-1  
Columbus, OH 43235

Re: Miller Salvage Site Removal Activities.

Dear Jack:

Enclosed please find a proposed Agreement For Consent And Access To Removal which we are requesting you present to your client Miller Land Company, Inc. for its consideration. As you are no doubt aware, Mill's Pride is currently removing accumulated sawdust from the Miller Salvage Site at 1617 Lapparell Road, Latham, Ohio, at the request of U.S. EPA. Consent for access to that Site has been granted by Fred T. Miller and Miller Salvage, Inc. A copy of their Agreement For And Consent To Access And Removal is enclosed. The agreement being proposed to your client is substantially identical to the one signed by Fred Miller and Miller Salvage.

In view of the allegations made by Miller Land Company, Inc. in the Eleventh Counterclaim to Mill's Pride's suit, we are not sure whether Miller Land Company opposes access to its property by the contractors hired by Mill's Pride to remove accumulated sawdust at and near the leachate retention pond that is partially on that property. In either case, we need to know the position of Miller Land Company with respect to the issue of access by the Mill's Pride's contractors performing the U.S. EPA directed removal activities.

On the assumption that your client does not wish to interfere with the removal activities occurring on and near the Miller Salvage property, and is not opposed to allowing Mill's Pride's contractors necessary access to its property for the removal activities, we have prepared the enclosed Agreement For And Consent To Access And Removal between Miller Land Company, Inc. and Mill's Pride. Please let me know as soon as possible your client's position with respect to this agreement.



Legal Counsel

Jack A. Van Kley, Esq.

December 5, 2007

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Thank you for your courtesy and cooperation. If you have any questions, please contact me.

Sincerely,

Paul J. Coval

PJC/css

Enclosures

cc: Mill's Pride, LLP  
Nola Hicks, U. S. EPA, Region V  
✓Mark Durno, U. S. EPA, Region V  
Dan Bergert, Ohio EPA

## AGREEMENT FOR AND CONSENT TO ACCESS AND REMOVAL

This Agreement For And Consent to Access and Removal ("Agreement") is entered into by and among Miller Land Company, Inc. ("Grantor"), on the one hand, and Mill's Pride, LLP, on the other hand. This Agreement is entered into with respect to the Miller Salvage Site, commonly referred to as located at 1617 Lapparell Road, Latham, Pike County, Ohio, and which is approximately 13 acres in size ("Site"). Grantors hereby grant access to Mill's Pride, LLP and its employees, agents, contracting parties, contractors, subcontractors, and representatives (collectively, "Grantees") to enter onto its property adjacent to the Site, known as the Miller Land Company Property, as necessary, for the following purposes, as requested, instructed, or ordered to do so by the U.S. Environmental Protection Agency ("USEPA"):

- a. All actions described in the attached "Consent for Access to Property", attached as Exhibit A, attached hereto, and incorporated herein;
- b. Removal of leachate, sawdust, hazardous substances/materials (collectively "Materials") for off-Site transportation, transfer of title, use, re-use, and/or disposal;
- c. Grading, re-grading, seeding, planting and/or watering of vegetation; and
- d. Other actions for purposes of protecting the health and safety of the Grantees, documenting the above-referenced activities, and otherwise responding to the requests, instructions, or orders of USEPA at the Site.

Grantor acknowledges that the actions authorized to be taken by Grantees pursuant to this Agreement are to be undertaken pursuant to the request, instruction, or order of USEPA pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Section 9601 *et seq.* ("CERCLA"). A copy of any such written request, instruction or order sent by USEPA and received by Grantees shall be provided to Grantor.

Grantor hereby agrees that it (a) relinquishes any claim which it may have of any and all right, title and/or interest to any and all Materials removed from the Miller Land Company Property by or for Grantees, and specifically authorizes the transfer of such Materials to one or more of the Grantees, or their grantee, at Grantee's sole discretion; (b) authorizes Grantees to execute manifests, bills of lading, and such other documents as Grantees deem necessary, in the name of Miller Land Company, Inc., for the removal, transportation, disposal, use, re-use and/or transfer of any and all Materials from its property; (c) does not, and shall not, contend that Grantees' actions hereunder cause Grantees to become owners or operators of the Site (as such terms are defined in CERCLA Section 107); and, (d) will not interfere in any way with Grantees' actions taken under this Agreement.

Grantor acknowledges that this Agreement is given and entered into voluntarily, on behalf of itself, and its respective officers, employees, shareholders, and representatives, and any other person with any interest in the Miller Land Company Property, with knowledge of its right to refuse and without threats or promises of any kind, and after opportunity to review with legal counsel. The undersigned is authorized by its respective Grantor to enter into this Consent for Access and Removal. Nothing herein shall constitute, or be interpreted to be, a release, waiver, or compromise of any claims, rights, or defenses that any of the parties hereto may have against the other, or any third party, concerning the Miller Land Company Property.

For valuable consideration acknowledged and received, each Grantor hereby executes this Agreement as of the date set forth next to its authorized signature below.

Miller Land Company, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

For valuable consideration acknowledged and received, Mill's Pride, LLP hereby executes this Agreement as of the date set forth next to its authorized signature below:

Mill's Pride, LLP

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment: Exhibit A

EXHIBIT A

CONSENT FOR ACCESS TO PROPERTY

Name: Miller Salvage c/o: Fred Miller

Address / Location of Property: 1617 Laparrell Road, Latham, OH

Materials processing area and leachate lagoon

I consent to officers, employees, contractors, and authorized representatives of the United States Environmental Protection Agency (U.S. EPA) entering and having continued access to this property for the following purposes:

Containing hazardous substances/materials present on the property;

Conducting monitoring and sampling activity;

Preparing for and disposing of hazardous substances/materials;

Performing other actions to investigate contamination on the property that U.S. EPA may determine to be necessary; and

Taking any response action to address any release or threatened release of a hazardous substance, pollutant, or contaminant which U.S. EPA determines to pose an imminent and substantial endangerment to the public health or the environment.

I realize that these actions taken by the U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

This written permission is given by me voluntarily, on behalf of myself and all other co-owners of this property, with knowledge of my right to refuse and without threats or promises of any kind.

Date: 1-25-07

Signature: 